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November 20, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

Re: BellSouth Section 272 Compliance Biennial Audit Report, CC Docket
No. 96-150; EB Docket No. 03-197

Dear Ms. Dortch:

Attached please find AT&T's response to BellSouth's request for confidential treatment of the redacted portions of its recently filed Section 272 audit report.

Please place a copy in the record of the above-referenced proceedings.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Simone".

ATTACHMENT

cc: D. Solomon
M. Del Duca
W. Davenport
W. Maher
J. Carlisle
M. Carey
B. Olson
W. Dever
C. Shewman



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November 20, 2003

VIA ELECTRONIC FILING

David H. Solomon
Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC, 20554

Re: BellSouth Section 272 Compliance Biennial Audit Report in CC Docket
No. 96-150; EB Docket No. 03-197

Dear Mr. Solomon:

On behalf of AT&T Corp., I am requesting that the unredacted version of the BellSouth Telecommunications, Inc., ("BellSouth") Section 272 Biennial Audit Report, prepared by Ernst & Young LLP (the "Auditor") and filed on November 10, 2003 ("BellSouth Section 272(d) Audit Report") be placed in the public file.

BellSouth, like its sister RBOCs Verizon and SBC, has redacted critical information that the Commission has already twice held must be disclosed, delaying the required public disclosure and potentially affecting the remedies available to the Commission should any violations be found.¹ As the Bureau held in response to Verizon's most recent submission of a redacted Section 272 audit report, the Commission has clearly and repeatedly held that "the plain language of section 272(d)(2) mandates

¹ See, *In the Matter of Verizon Telephone Companies, Inc. Apparent Liability for Forfeiture*, File No. EB-03-IH-0245 (rel. Sept. 8, 2003). There, the Commission

public disclosure of the results contained in the audit report,” that “public disclosure of the audit results will promote meaningful comment on the audit results pursuant to section 272(d)(2) and thereby help the Commission determine compliance with section 272 and the Commission’s rules.”² The redacted data in all the prior Orders was precisely the same as that which BellSouth seeks to redact here: performance measurement related data collected six months prior to the issuance of the audit report³ “at a summary, not detailed level”⁴ (See, Appendix A at 48-49, 51 and Attachment A, *passim* – all 155 pages). As the Commission and Bureau previously found, data in this format have no utility to competitors, but have great significance in evaluating a BOC’s compliance with Section 272.⁵

The Commission has rejected prior arguments by the BOCs “that the information contained in the section 272(d) biennial audit report is protected from disclosure by [section 220 of] the Act,” because “[t]he biennial audit of a BOC’s compliance with the section 272 separate affiliate requirements is conducted under the specific authority of section 272(d)(2), not the general authority of section 220.”⁶ In any event, the

held, as to the Internet posting violations, that “because we are barred by the one year statute of limitations” all it could do was “admonish the company.” *Id.*, ¶ 13.

² *In the Matter of Section 272(d) Biennial Audit of Verizon Communications, Inc.*, Memorandum Opinion and Order, EB File No. EB-03-IH-0341 (rel. Aug. 8, 2003) (“*Second Verizon Disclosure Order*”) ¶ 7, citing to *In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, Memorandum Opinion and Order, CC Docket No. 96-150, 17 FCC Rcd. 1374 ¶¶ 5, 8 (“*First Verizon Disclosure Order*”) *recon. denied*, Order on Reconsideration, 17 FCC Rcd. 6955 (2002) (“*Verizon Reconsideration Order*”) and *In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, Memorandum Opinion and Order, CC Docket No. 96-150, 17 FCC Rcd. 17012 (2002) (“*SBC Disclosure Order*”) ¶¶ 8, 33.

³ The BellSouth redacted data is from June 2002 through May 2003.

⁴ *First Verizon Disclosure Order* ¶¶ 16-19; *SBC Disclosure Order* ¶ 8.

⁵ *First Verizon Disclosure Order* ¶ 8.

⁶ *Id.* ¶ 9.

Commission further held that disclosure was consistent with Section 220(f).⁷ The Commission further held that disclosure was consistent with the Trade Secrets Act⁸ and Exemption 4 of the Freedom of Information Act (FOIA)⁹ on which section 0.459 is based.¹⁰

Finally, the Commission has repeatedly held, as has the Bureau, that “a protective order would run counter to the statutory requirement to make the audit results contained in the final section 272 audit available for public inspection and to allow any party to comment on the audit report.”¹¹ That is, “[b]y its very nature, a protective order restricts access to information to certain personnel and restricts the ability of those personnel to use the information reviewed only for limited purposes. No restrictions or limitations on inspecting or commenting on the report are contained in section 272(d)(2).”¹²

There is no justification for a different result here than in the earlier Verizon and SBC Section 272 Audit proceedings. For the foregoing reasons, AT&T respectfully requests that Auditor be compelled to file an unredacted version of the BellSouth § 272(d) Audit Report.

⁷ *Id.* at n.28. The Commission expressly stated that its holding was also consistent with the Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816 (1998) (*Confidential Treatment Order*), *order on reconsideration*, 14 FCC Rcd 20128 (1999). See, *First Verizon Disclosure Order* ¶¶ 8 at n. 22 (aggregated data generally not protected), 11 at n. 33 (same) and 12 at n. 38.

⁸ 18 U.S.C. § 1905; *First Verizon Disclosure Order* at n. 44.

⁹ 5 U.S.C. § 0.552(b)(4).

¹⁰ *First Verizon Disclosure Order* ¶ 14; *SBC Disclosure Order* ¶¶ 10-11 and 13-14. As to the Trade Secrets Act, the Commission cited to *Qwest v. FCC*, 229 F.3d 1172 (D.C. Cir. 2000) (“The *Qwest Communications* court found that the [Communications] Act and the Commission’s regulations satisfied the “authorized by law” requirement.”). *First Verizon Disclosure Order* ¶ 14.

¹¹ *Second Verizon Disclosure Order* ¶ 9, citing to *Verizon Reconsideration Order* ¶ 3 and *SBC Disclosure Order* ¶ 35.

¹² *Verizon Reconsideration Order* ¶ 3.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Aryeh S. Friedman", with a long horizontal flourish extending to the right.

Aryeh S. Friedman

cc: M. Del Duca
W. Davenport
W. Maher
M. Carey
J. Carlisle
B. Olson
W. Dever
C. Shewman